$~8(2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 10360/2020**

% Date of decision: 20.12.2021

HARSH PRAKASH ......Petitioner

Through : Mr Apurb Lal, Adv.

versus

UNION OF INDIA AND ANOTHER ......Respondents

Through : Mr Pradeep Kumar Sharma, Adv. for Union of India.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE TALWANT SINGH
Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the order dated 25.09.2020, passed by the Central Administrative Tribunal [in short 'the Tribunal'] in O.A. No.1323/2017.

2. Notice in this writ petition was issued on 14.12.2020. On that date, the respondents were represented by Mr Pradeep Kumar Sharma, Advocate, who was granted four weeks to file a counter-affidavit in the matter.

2.1. Admittedly, to date, the counter-affidavit has not been filed.

2.2. Today, once again, Mr. Sharma seeks an opportunity to file a counter-affidavit.

3. Mr Apurb Lal, who appears on behalf of the petitioner, on the other hand, says that, apart from the fact that there has been an enormous delay in filing the counter-affidavit, the same will not be necessary as, there are no averments in the writ petition which are not in line with what was stated by the petitioner in his original application [i.e., O.A No. 1323/2017] filed before the Tribunal.

3.1. Mr Sharma is not able to demonstrate that the petitioner has set up a case different, from what was stated before the Tribunal. All that Mr Sharma seeks is further time to file a counter-affidavit in the matter. We are not inclined to grant any further time on that score.

3.2. In our view, it is not necessary for a counter-affidavit to be placed on record, as the respondents had filed a reply before the Tribunal, and certainly, they cannot veer away from the position they took before the Tribunal. Pertinently, notice in the writ petition was issued, as noticed above, on 14.12.2020, and since then, thrice opportunity has been given to the respondents to file the counter-affidavit.

4. The short issue which arises for consideration in the instant case is as to whether the petitioner could have been denied promotion to the post of Principal Commissioner of Income Tax (PCIT), from the point in time when his juniors were promoted to the said post, after his Annual Confidentiality Reports (ACRs) for the relevant years i.e., 2000-2001 and 2001-2002 were upgraded to 'very good'; which is the benchmark for the post of PCIT, after 28.01.2013.

4.1. In this context it would be relevant to extract the relief sought by the petitioner before the Tribunal.

> *"(i) set aside the Order No.26/2017 dated 20.02.2017 passed by the respondents by which the applicant was made junior;"*

4.2. To be noted, the petitioner, apart from encountering the problem of grading in the aforementioned ACRs, was otherwise eligible for promotion to the post of CIT in 2007.

5. The Tribunal, via the impugned order, denied relief to the petitioner by placing the onus of convening the review Departmental Promotion Committee (DPC) on the petitioner. It held, rather peculiarly, that since there was nothing on record to show that a DPC had been held, the petitioner could not be granted relief in the matter.

5.1. Mr Lal emphasised, something that we have noticed above, that the onus was on the respondents to hold the review DPC, once the order upgrading the petitioner's ACRs was passed on 28.01.2013.

5.2. To demonstrate the anomaly in the approach adopted by the Tribunal, our attention has been drawn to paragraph 6 of the impugned order dated 25.09.2020. For the sake of convenience, the same is extracted hereafter:

> "*6. Though the applicant stated that his ACRs, which came in the way of promotion in the year 2007, were upgraded, there is nothing on record, to disclose that any Review Departmental Promotion Committee was convened to consider his case for promotion, with reference to the year 2007. That not having taken place, he remained junior to 34 officers who superseded him when promotion took place to CIT in the year 2007. Naturally, the same trend continued when the promotion to Principal CIT was also made.*"

5.3. We are of the view that the Tribunal has committed an error, which needs course correction.

6. Accordingly, the impugned order dated 25.09.2020, is set aside.

6.1. The respondents are directed to convene a DPC which will review and consider the petitioner for promotion to the post of PCIT, from the point in time when his immediate junior was promoted.

6.2. The order which was impugned before the Tribunal shall be corrected, if the petitioner is found fit.

6.3. All consequential benefits will also be accorded to the petitioner, if he is otherwise found fit by the DPC while carrying out the review.

6.4. Needless to add, the respondents will carry out the aforesaid exercise expeditiously, though, not later than 12 weeks from date it receives a copy of the judgement.

7. Parties will act based on the digitally signed copy of this judgment.

8. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TALWANT SINGH, J

DECEMBER 20, 2021/aj

Click here to check corrigendum, if any